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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,947	01/13/2004	Norman F. Krasner	000730C1	3281

23696 7590 05/22/2007  
QUALCOMM INCORPORATED  
5775 MOREHOUSE DR.  
SAN DIEGO, CA 92121

EXAMINER

CUMMING, WILLIAM D

ART UNIT	PAPER NUMBER
2617	

NOTIFICATION DATE	DELIVERY MODE
05/22/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us-docketing@qualcomm.com  
kscanla@qualcomm.com  
nanm@qualcomm.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/756,947	<b>Applicant(s)</b> NORMAN KRANER	
	<b>Examiner</b> WILLIAM D. CUMMING	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 11/02/06.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-84 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-84 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Response to Arguments***

1. Applicant's arguments, see Pre Appeal Request, filed September 18, 2006, with respect to 35 USC §103(a) have been fully considered and are persuasive. The rejection of 35 USC §103(a) has been withdrawn.

2. Applicant's arguments with respect to claims 1-84 in the Appeal Brief filed March 19, 2007 for some reason by Applicant's attorney filed have **NOT** been considered <sup>and</sup> is moot. Also Applicant's attorney did **NOT** either traverse the nonstatutory double patenting rejection or file a terminal disclaimer in any response. If applicant does **NOT** either traverse the nonstatutory double patenting rejection or file a terminal disclaimer it will be consider a **DELIBERATE** non-responsive response and the application maybe **ABANDONED**. Hence, another Office action must be issued.

***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

4. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
5. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
6. Claims 1-84 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. **09/074,021**, now **United States Patent 6,814,710** Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the continuation are broader than the claims in the parent application (In re Van Ornum and Stanz, 214 USPQ 761).
7. Claims 1-84 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5,812,087 in view of **Murphy** as stated by paragraph 7 of Office actions dated March 21, 2000 and December 9, 2002.
8. These nonstatutory double patenting rejections **CANNOT** be held in abeyance. Applicant **MUST** either traverse the nonstatutory double patenting rejection or file a terminal disclaimer. If applicant does **NOT** either traverse the nonstatutory double patenting rejection or file a terminal disclaimer it will be considered a **DELIBERATE** non-responsive response and the application may be **ABANDONED**.

### **Conclusion**

9. If applicants wish to request for an interview, an "*Applicant Initiated Interview Request*" form (PTOL-413A) should be submitted to the examiner prior to the interview in order to permit the examiner to prepare in advance for the interview and to focus on the issues to be discussed. This form should identify the participants of the interview, the proposed date of the interview, whether the interview will be personal, telephonic, or video conference, and should include a brief description of the issues to be discussed. A copy of the completed "*Applicant Initiated Interview Request*" form should be attached to the Interview Summary form, PTOL-413 at the completion of the interview and a copy should be given to applicant or applicant's representative.

10. If applicants request an interview after this final rejection, prior to the interview, the intended purpose and content of the interview should be presented briefly, in writing.

Such an interview may be granted if the examiner is convinced that disposal or clarification for appeal may be accomplished with only nominal further consideration.

Interviews merely to restate arguments of record or to discuss new limitations which would require more than nominal reconsideration or new search will be denied.

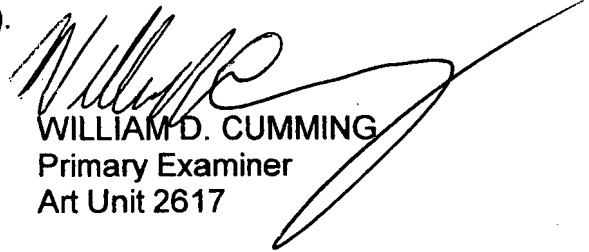
11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **WILLIAM D. CUMMING** whose telephone number is **571-272-7861**. The examiner can normally be reached on Monday-Thursday 11am-8:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on 571-272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
WILLIAM D. CUMMING  
Primary Examiner  
Art Unit 2617

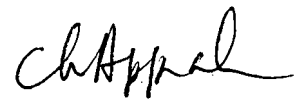
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